

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Shirley (Keyron) McDermott,**  
Petitioner-Appellant,

**v.**

**Dubuque County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 12-31-0494**  
**Parcel No. 1931302007**

On September 25, 2013, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Shirley (Keyron) McDermott was self-represented. The Dubuque County Board of Review was represented by Assistant County Attorney Lyle Gallart. Both parties participated by phone. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Shirley (Keyron) McDermott is the owner of a residential, single-family property located at 209 Tyler Street NE, Cascade, Iowa. According to the property record card, the property is a two-story, frame home built in 1880 with 1502 square feet of total living area. The property also has a 155 square-foot, open porch and a 240 square-foot, detached garage. The improvements are listed as below average quality grade (5) and in below normal condition. We note the property record indicates this subdivision is not in a flood plain. The site is 0.918 acres.

McDermott protested to the Dubuque County Board of Review regarding the 2012 assessment of \$74,640, which was allocated as follows: \$33,570 in land value and \$41,070 in improvement value. The January 2012 assessment of the subject property did not change from the 2011 assessment. Her

claim was that the property suffered a downward change in value under sections 441.37(1)(b) and 441.35(2). On the Board of Review petition form, McDermott stated “both the recession and drainage have devalued property in this area.” McDermott did not offer a value she believed to be correct to the Board of Review. The Board of Review denied her claim.

McDermott then appealed to this Board, re-asserting her claim. On the Notice of Appeal & Petition form to this Board, McDermott wrote “uncertain” as to what she believed to be the correct assessed value.

McDermott’s concern is that the 100-year flood plain has been changed by the Federal Government and her property is now partially included. We note the 100-year flood plain covers only a portion of her lot where there are no improvements. The dwelling is not included in the 100-year flood plain as it sits on a rise, but is included in the 500-year flood plain. The last time the dwelling flooded was in 1925. She maintains this action of changing the flood plain boundaries has devalued her property.

McDermott testified she grew up on the subject property and in 1987 she moved there after her mother passed away. She was out of the country from 1998 to mid-2002 and upon return, immediately noticed the waterway (Tributary F/G) had undergone a remarkable change. It now had water in it year-round, when, in years past, it was normally dry in the mid-summer. She further stated she discovered that retention basins, which were built for a new development on the east side of Cascade, were now contributing to the water problem affecting her property and neighboring properties. She stated the city has no ordinance addressing how much of a lot can be paved thus adding to the problem of runoff. She also asserts there was a problem with the Cascade Economic Development Group and the City Council as to whether or not the law had been followed dealing with storm drainage. She notes the subject property is not connected to the City of Cascade’s water system.

Throughout her presentation of evidence and testimony McDermott did not provide any evidence as to the subject property's market value, such as adjusted sales of comparable properties or an appraisal. This evidence is necessary to succeed in a downward change in value claim. The January 1, 2011, market value and the January 1, 2012, market value must be established to prove this claim.

Dave Kubik, the Dubuque County Assessor testified for the Board of Review. He stated in 2011 he used the cost approach to value the subject property at \$74,640. He also testified that any home that was required to have flood insurance received a discount on the valuation. Only mortgaged dwellings in the 100-year flood plain were required to have the flood insurance. In this case, McDermott's dwelling is not in the 100-year plain, although part of her lot is. (Exhibit A). Because there is no requirement that flood insurance be maintained on the subject property as the dwelling is not located in the 100-year flood plain, Kubik did not apply any adjustment.

Further, Kubik has not seen evidence suggesting that sale prices are negatively affected by a property's location adjacent to or nearby a flood plain and therefore applies no adjustment to the subject property or similarly situated properties. He does, however, apply adjustments to properties located directly in the 100-year flood plain to account for the requirement that they maintain flood insurance.

The Board of Review provided aerial photographs of the subject property's surrounding area showing development from 2009 to 2011. In Kubik's opinion, those photographs establish that little development occurred during this time.

Kubik also noted that of the sales in Cascade from July 1, 2010, to June 30, 2011, the median property's sales price was four percent higher than its assessed valuation. Similarly, of the sales from July 1, 2011, to June 30, 2012, the median property's sales price was roughly nine percent higher than its assessed valuation. This data implies that properties in the area were under-assessed. We note the

average sales price-to-assessment ratio over these same periods was approximately 99%, suggesting that any underassessment is minimal.

Under Iowa case law, McDermott's claim, that the subject property suffered a downward change in value, requires that she provide sufficient evidence as to the subject property's fair market value as of January 1, 2011, and January 1, 2012. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). While we empathize with McDermott's concerns regarding flooding, the evidence and testimony presented by McDermott does not establish the property's fair market value on either date. In fact, McDermott herself is uncertain as to the property's correct value, as indicated by her notation on her Notice of Appeal & Petition form to this Board. Ultimately, McDermott did not provide sufficient evidence to succeed on her claim.

### ***Conclusions of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. §441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

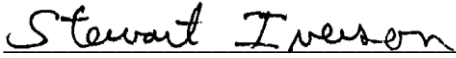
This Board's limited statutory purpose is to review decisions of local boards of review. § 421.1A. The Appeal Board is not an independent assessing tribunal. *Equitable Life Ins. Co. v. Bd. of Review of the City of Des Moines*, 281 N.W.2d 821, 827 (Iowa 1979). If the Board determines the grounds for protest have been established, it must then independently determine the value or correct assessment of the property based on all the evidence. *Compiano v. Board of Review of Polk County*, 771 N.W.2d 392 (Iowa 2009).

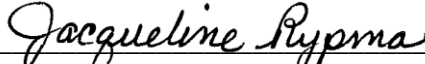
In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc.*, 497 N.W.2d at 862. Iowa Code section 414.37(1)(b) and its reference to section 441.35(2) give rise to the claim of downward trend in value. For McDermott to be successful in her claim of change in value, she must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for McDermott to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

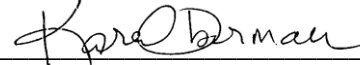
Here, McDermott failed to provide sufficient evidence of both the January 1, 2011, and the January 1, 2012, market value to prove her claim. As such, she failed to establish the grounds of her appeal, that the subject property has suffered a downward change in value.

THE APPEAL BOARD ORDERS the assessment of Shirley (Keyron) McDermott's property located at 209 Tyler Street, Cascade, Iowa, of \$74,640, as of January 1, 2012, set by the Dubuque County Board of Review, is affirmed.

Dated this 15th day of October, 2013.

  
Stewart Iverson, Presiding Officer

  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Member

Copies to:

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ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>October 15, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	